

CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF VALLEJO
AND
GREGORY NYHOFF

1. Parties and Date

This Agreement is entered into as of December 14, 2017 by and between the City of Vallejo, California, a municipal corporation (the "City"), and Gregory Nyhoff, an individual (The "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."

- A. The City requires the services of a City Manager.
- B. The City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager; and
- C. The City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City.
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of the Charter of the City of Vallejo and the Vallejo Municipal Code.
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

2. Employment

The City hereby employs Gregory Nyhoff as its City Manager, effective January 22, 2018 and the City Manager hereby accepts such employment.

3. Commitments and Understandings

A. The City Manager's Commitments

(1) Duties & Authority

- (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The City Manager shall perform all of the duties of the City Manager as set forth in the Charter of the City of Vallejo and the Vallejo Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.

- (c) The City Manager is also, by City Council designation, the chief executive of other City-related legal entities such as the housing authority and the successor agency to the Vallejo Redevelopment Agency. Additional designations might include financing authorities, and joint powers authorities.
- (d) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.
- (e) To the extent consistent with the charter, the Vallejo Municipal Code and California state law, the City Manager shall have the power and shall be required to:
 - (i) Attend all meetings of the City Council, unless excused due to temporary absence or disability and take part in the discussion of all matters before the City Council. The City Manager shall receive notice of all regular and special meetings of the City Council.
 - (ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council. The City Manager may publicly endorse or oppose any proposed agenda items placed on the agenda by persons other than the City Manager or the City Manager's staff.
 - (iii) Direct the work of all elective and appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council. The City Manager may undertake any study or investigation the City Manager believes is necessary or desirable and shall make any study or investigation the City Council directs. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.
 - (iv) Recommend to the City Council from time to time, adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.
 - (v) With the consent of the City Council, the City Manager may consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction and may serve as the head of one or more City departments.
 - (vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
 - (vii) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
 - (viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

- (a) The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times.
- (b) It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.
- (c) The City Manager shall not engage in any non-City connected business without the express written approval of a majority of the City Council.

(3) Disability or Inability to Perform

- (a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's essential functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, the City Council may, subject to state and federal law, terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall not receive severance benefits provided in Section 5.C below.

B. City Commitments

- (1) The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.
- (2) The City shall provide the City Manager with a private office, secretary, staff, office equipment, supplies, auto allowance and a cell phone, and all other facilities and services as needed and appropriate for the performance of City Manager's duties.
- (3) The City shall pay for or provide reimbursement for all reasonable and lawful business expenses of the City Manager incurred as a result of performing the duties of the City Manager. The City shall provide the City Manager a City credit card to charge appropriate and lawful business expenses. Lawful business expenses shall be supported by receipts.
- (4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement and as approved by the City Council in the City's annual budget. At a minimum, this shall include any annual professional dues for membership with the International City Manager's Association ("ICMA") and the League of California Cities.
- (5) The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the

professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member and as approved by the City Council in the City's annual budget. At a minimum, this shall include attendance at the annual ICMA conference and the Annual League of California Cities conference.

- a. This shall also include attendance at Harvard University's Kennedy School of Government within the first term of employment as detailed in this employment agreement.
- (6) The City also agrees to pay reasonable costs for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager and as approved by the City Council in the City's annual budget.
- (7) The City Manager shall prepare and submit to the City Council on an annual basis, or upon request of the Council as part of a performance evaluation, a report detailing the expenses and costs related to Subsections (4), (5) and (6).
- (8) Given the importance of technological tools to the effective and efficient business of City government, the City shall provide such tools as a desktop computer and/or laptop computer, electronic tablet, high-speed internet access, electronic calendar, fax, copy machine and similar devices to the City Manager at the City Manager's office and as approved by the City Council in the City's annual budget.
- (9) The City Manager shall be provided funding to conduct organizational assessments and performance audits as needed and as approved by the City Council in the City's annual budget.

C. City Council Commitments

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
- (2) The City Council recognizes that to meet the challenges facing the City they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals.
- (3) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.
- (4) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.
- (5) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

D. Mutual Commitments

(1) Performance Evaluation

- (a) Annual performance evaluations are an important way for the City Council and City Manager to ensure effective communications about expectations and performance.
- (b) The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council Members evaluate the City Manager's performance.
- (c) To assure that the City Manager gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance at least once each year. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times each calendar year.
- (d) The City Manager and the City Council will create goals or other outcome measures that will provide the basis for the next performance review on an annual basis on or before April 30th of each year.
- (e) The annual review shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Manager.
- (f) The City Council and the City Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the City Manager shall further establish a relative priority among those goals and performance objectives.

4. Compensation

The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A. Compensation & Required Employer Costs

1. Base Salary

- (a) The beginning annual salary for the position of City Manager shall be Two Hundred Sixty Five Thousand Dollars and No Cents (\$265,000.00). Thereafter, the City Manager's annual salary increases, if any, shall be based on performance and as determined by the City Council.
- (b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees.
- (c) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads.

2. Automobile Allowance

The City Manager shall be provided a monthly automobile allowance of Five Hundred Dollars and No Cents (\$500.00) in exchange for making a non-City-owned vehicle available for the

City Manager's own use and for City-related business and/or functions during, before and after normal work hours and the City Manager shall provide auto insurance, fuel and maintenance for this vehicle.

3. Cell Phone

The City Manager shall be provided a City owned cell phone for City-related business and/or functions during, before and after normal work hours. The City of Vallejo shall pay for any expenses related to initial purchase, data plan, monthly service plan, insurance, and replacement due to normal wear and tear.

4. Housing Assistance Allowance

The City Manager shall be provided with a monthly allowance for a primary residence in the amount of One Thousand Five Hundred Dollars and No Cents (\$1,500.00) per month provided such primary residence is located within the corporate limits of the City of Vallejo. The housing assistance allowance will terminate if the City Manager opts to take advantage of the City's offer of residential mortgage loan assistance. (See Section D.7. below). In addition, the housing assistance allowance will be terminated as of the City Manager's date of separation from employment as the City Manager with the City of Vallejo.

5. Relocation Assistance Reimbursement

The City Manager shall be provided a one-time reimbursement of up to Ten Thousand Dollars and No Cents (\$10,000.00) to assist with relocation of his primary residence to a primary residence located within the corporate limits of the City of Vallejo. Any expenditure to be reimbursed must be reasonable, necessary, and incurred after the City executes an employment agreement with the City Manager. Receipts must be submitted to the City within twelve (12) months after the first day of employment with the City of Vallejo. The City Manager will obtain a minimum of three (3) bids from bona fide firms providing moving and relocation services and submit these bids to the City of Vallejo before contracting for moving and relocation services. All expenses must be supported with receipts or other appropriate documentation to be eligible for reimbursement. The City Manager shall also be provided with reimbursement for reasonable expenses for travel (e.g., airfare), lodging and rental car for himself and his spouse for up to two (2) visits to Vallejo prior to his first actual day of employment to meet with City Council, City staff, and to locate and secure housing.

6. Transitional Housing Expense Allowance

The City Manager shall be provided with an allowance for transitional housing expense assistance, if the City Manager is unable to negotiate an early release of his current lease agreement on his primary residence in Oxnard, California, in an amount of Two Thousand Five Hundred Dollars and No Cents (\$2500.00) per month for a period of up to two (2) months.

7. Residential Mortgage Loan Assistance

The City Manager may choose to borrow funds via a city issued zero percent (0%) interest loan, to assist with the purchase of a primary residence located within the corporate limits of the City of Vallejo, in an amount up to One Hundred Thirty Thousand Dollars and No Cents

(\$130,000.00). A promissory note secured by a first or second deed of trust setting forth repayment terms for this loan will be negotiated and executed between the Parties prior to the issuance of such a loan. A condition of the loan will be that the balance on the loan will become due and payable upon separation of employment.

8. Life Insurance & Accidental Death & Disability Insurance

The City Manager shall be provided with life insurance and Accidental Death & Disability Insurance under the same terms as those of the Unrepresented Employee Group, except that the coverage level for the City Manager shall be increased to a maximum of Five Hundred Thousand Dollars and No Cents (\$500,000.00) for term life insurance and a benefit of Sixty Percent (60%) of the City Manager's annual base salary for Accidental Death and Disability Insurance.

9. Deferred Compensation Plans

The City Manager may voluntarily participate in the deferred plans available to other exempt, at-will employees in the Unrepresented Employees group:

- (a) 457 Plan
- (b) 401(A) Plan
- (c) IRS 125 Plan
- (d) PARS Plan

10. Employee Assistance Coverage

The City shall provide an Employee Assistance Program and pay the full cost of this coverage for the City Manager during his term of employment.

11. Required Employer Costs

- (a) Employers' share of Federal Insurance Contributions Act (FICA), including:
 - (i) Old Age Survivor and Disability Income (OASDI).
 - (ii) Medicare.
- (b) Unemployment Compensation.
- (c) California Public Employees Retirement System (CALPERS) Plan.
 - (i) The City contracts with CALPERS for retirement benefits.
 - (ii) The City Manager qualifies as a "Classic" member of the CALPERS system and is covered by the 2.7% at 55 retirement formula due to prior service in other California municipalities participating in the CALPERS system.
 - (iii) As a "Classic" member, the City Manager will pay the Employee's share of Eight Percent (8%) and One Percent (1%) of the Employer's share of the CALPERS rate for a total of Nine Percent (9%). Such contribution amount will be deducted from the City Manager's paycheck pursuant to this Resolution.
 - (iv) With respect to retirement compensation and all other relevant respects, the City will comply with Cal. Government Code section 7522 et seq., including but not limited to the employee cost-share, the cap on pension benefits, and the three year average for calculating final compensation.
- (d) Social Security – The City Manager is covered by the Social Security Act. This benefit is in addition to the CALPERS Retirement Plan. The City and the City Manager each pay their

required amount under the Social Security Act. The City Manager's contribution amount will be deducted from his paycheck.

- (e) The cost of any fidelity or other bonds required by law for the City Manager.
- (f) The cost to defend and indemnify the City Manager as provided in Section 5.E. below.
- (g) Workers' compensation to the same extent provided to other employees of the City.

B. Basic Benefits

1. General

The City Manager is entitled to the same benefits as are available to other Unrepresented Executive Management Employees group ("Unrepresented Employees") with twenty-five (25) years of service with the City of Vallejo, unless specifically revised herein.

2. Holidays

- (a) Declared Holidays – The City Manager shall be entitled to the same eleven (11) holidays each fiscal year as set by the City Council in Resolution No. 17-126 and under the same terms as provided to the Unrepresented Employee group.

3. Annual Leave Allowance

- (a) The City Manager shall be given One Hundred and Twenty (120) hours of annual leave credit effective upon the execution of this Agreement. The City Manager shall then begin accruing annual leave at a rate of Two Hundred (200) hours per year.
- (b) The City Manager has the option of cashing out annual leave hours up to a maximum of Eighty (80) hours every calendar year.
- (c) Limitation on Accumulation - The City Manager is eligible to accumulate annual leave up to that which can be accumulated in three (3) years; currently Six Hundred (600) Hours. The City Manager shall not accrue annual leave beyond the maximum allowed.
- (d) If the City Manager resigns, retires or is otherwise separated from service of the City, he shall receive annual leave pay for all of his accrued unused annual leave upon separation from employment. The amount of payment for all unused annual leave shall be calculated based on the City Manager's base hourly rate of pay in effect on his last day of employment.

4. Administrative Leave Allowance

- (a) The City Manager shall be given Eighty (80) hours of administrative leave credit on the effective date of this Agreement. The City Manager shall be credited with eighty (80) hours of administrative leave on January 1 of each subsequent year, starting on January 1, 2019.
- (b) The City Manager has the option of cashing out administrative leave hours up to a maximum of Eighty (80) hours every calendar year.
- (c) If the City Manager resigns, retires, or is otherwise separated from service of the City, he shall receive administrative leave pay for all of his accrued unused administrative leave upon separation from employment. The amount of payment for all unused administrative

leave shall be calculated based on the City Manager's base hourly rate of pay in effect on his last day of employment.

5. Sick Leave Allowance

- (a) The City Manager shall be given Eighty (80) hours of sick leave effective upon the execution of this Agreement. The City Manager shall then begin accruing sick leave on the same basis as other exempt, at-will employees in the Unrepresented Employee group. The current rate of accrual is Eight (8) hours per month.
- (b) The City Manager shall begin accruing sick leave benefits on his first day of employment and shall be eligible to use sick leave from the point of accrual.
- (c) Limitation on Accumulation – The City Manager shall be eligible to accumulate sick leave up to that which can be accumulated in three (3) years or Two Hundred Eighty-Eight (288) hours.
- (d) Retirement from Service - Upon retirement from the City, the City Manager shall not be entitled to cash out any remaining sick leave balance. Accumulated sick leave hours may be used to purchase additional CALPERS service credit.

6. Bereavement Leave

- (a) The City Manager may use sick leave for the purpose of bereavement leave up to a maximum of three (3) working days per bereavement on the same basis as other exempt, at-will employees in the Unrepresented Employee group.

7. Health Care Benefits

- (a) The City Manager shall be entitled to the same health care benefits, including Group Health Insurance, Retiree Health Insurance, Medical Insurance Flex, Dental, Vision and Employee Assistance Program, as are provided to other exempt, at-will employees in the Unrepresented Employee group and at the same rates as provided to Unrepresented Employees.

5. Separation

A. Resignation/ Retirement

The City Manager may resign at any time and agrees to give the City at least thirty (30) days advance written notice of the effective date of the City Manager's resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service with the City, the City Manager shall provide six (6) months' advance written notice.

B. Termination & Removal

- (1) The City Manager is an exempt, at-will employee serving at the pleasure of the City Council under the authority of Vallejo City Charter Section 400.
- (2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. Termination as used in this section shall also include a request by the City Manager that the City Manager resign, a reduction in salary or other financial benefits of the City

Manager (including a general City Management salary reduction) of more than ten percent (10%) in current base salary and/or other financial benefits of the City Manager, except as occasioned by a reduction in the salary of other Exempt Managers, a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular meeting of the City Council.

- (3) Pursuant to the provisions of Vallejo City Charter Section 407 (c), an affirmative vote of at least five (5) members of the City Council shall be required to terminate the City Manager within sixty (60) days after his initial appointment, or within sixty (60) days after any election at which members are elected to the City Council.

C. Severance Pay

- (1) In the event the City Manager is involuntarily terminated as defined in Section 5.D. below by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement during the term of this Agreement or any extension thereof, then in that event the City agrees to pay the City Manager a lump sum cash payment equal to twelve (12) months' base salary, or equal to his monthly salary multiplied by the number of months left on the unexpired term of this Agreement, whichever is less. In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay one-half of the premium for the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to a lump sum cash payment under this Section, or until Employee either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Manager shall notify the City within five (5) calendar days of securing new full-time employment or insurance.
- (2) In exchange for the consideration provided in paragraph C (1), the City Manager shall execute release of all claims in a form mutually acceptable to the Parties.

D. Involuntary Termination

"Involuntary termination" as used in this Section means City Manager discharge or dismissal by the City, or his resignation following a salary reduction of more than ten percent (10%), except as occasioned by a reduction in the salary of other Exempt Managers, or his resignation following a request by the City Council, approved by a majority vote of the entire City Council, that he resign. Involuntary termination does not include City Manager's death, incapacity due to injury or illness (physical or mental), dismissal for just cause as defined in Section E below, nor City Manager's resignation for any reason other than stated in this Section. The City Council may withhold payment of severance pay pending final disposition of any criminal charges.

E. Separation for Cause

- (1) Notwithstanding the provisions of Section 5.D, the City Manager may be terminated for cause. As used in this Section, "cause" shall mean only one or more of the following:
 - (a) Willful misconduct;
 - (b) Malfeasance;

- (c) Dishonesty for personal gain;
 - (d) Conviction of a felony;
 - (e) Conviction of a misdemeanor involving moral turpitude;
 - (f) Continued abuse of drugs or alcohol that materially affects the performance of the Manager's duties;
 - (g) Repeated and protracted unexcused absences from the City Manager's office and duties;
 - (h) Willful abandon of duties; or
 - (i) Acceptance of employment from another source which is inconsistent with full-time employment as Vallejo's City Manager and in violation of Section 6.D. of this Agreement.
- (2) In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits.
 - (3) In the event the City terminates the City Manager for cause, the City and the City Manager agree neither Party shall make any written or oral statements to members of the public or the press concerning the City Manager's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.
 - (4) In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

6. Miscellaneous Provisions

A. Term

(1) Initial Term

The Initial Term shall be for a period of sixty (60) months commencing on January 22, 2018, and continuing until January 21, 2023 (the initial "Termination Date"), unless terminated earlier in accordance with Section 5.

(2) Subsequent Terms

This Agreement shall automatically renew as provided herein unless the City gives the City Manager timely notice of non-renewal. The City must give the City Manager written notice of non-renewal at least six (6) months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional year and a new Termination Date shall be accordingly established. If notice of non-renewal is given, the City Council may at any time choose to relieve the City Manager of his duties and pay any remaining salary and benefits as a lump sum.

B. Provisions that Survive Termination

Only the sections of this Agreement that by their terms are reasonably intended to survive the termination of this Agreement shall survive the termination of this Agreement.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

D. Conflict of Interest

- (1) The City Manager shall not engage in any business or transaction or shall have a financial or other personal interest or association, either direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification

Except as otherwise provided by law, and provided that City Manager complies with the provisions of Sections 825 and 825.6 of the California Government Code, as now existing or hereafter amended, City shall defend, hold harmless, and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of City Manager's duties in accordance with the provisions of Sections 825 and 825.6, as now existing or hereafter amended. City may conduct such defense reserving the rights of City not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of City Manager's employment as an employee of City. City is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of City Manager's employment as an employee of City. Nothing in this Agreement authorizes or obligates City to pay that part of any claim or judgment that is for punitive or exemplary damages. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom only to the extent authorized in Sections 825 through 825.6, as now existing or hereafter amended.

If the City Manager is convicted of a crime involving an abuse of his office or position, as defined in Government Code Section 53234.4, then the City Manager shall fully reimburse the City for any paid leave salary paid by the City to the City Manager pending any investigation, funds provided

to the City Manager for his legal criminal defense, and/or any severance pay or cash settlement paid to the City Manager related to his termination by the City. Said reimbursements are required if such payments are made, even if the payments were made by the City in the absence for any contractual requirement to do so.

F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the parties agree that venue shall be in Solano County, California.

H. Entire Agreement

This Agreement represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by a written, fully executed agreements of the Parties.

I. Waiver

Waiver by either Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

J. Ambiguity

The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

K. Headings

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

L. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either Party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by postage prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to the City:

Bob Sampayan, Mayor
555 Santa Clara Street, Vallejo, California 94590

(2) If to the City:

Claudia Quintana, City Attorney
555 Santa Clara Street, Vallejo, California 94590

(3) If to the City Manager:

Gregory Nyhoff
555 Santa Clara Street, Vallejo, California 94590

Notices shall be deemed received upon receipt or upon depositing in the U.S. Mail postage prepaid first class mail.

M. Conflict with Charter

Should any provision of this Agreement be found to conflict with the Charter of the City of Vallejo, the provisions of the Charter shall control.

N. Facsimile Signatures

This Agreement shall be binding upon the receipt of facsimile signatures; provided, however, that any person transmitting his or her signature by facsimile shall promptly send an original statement to the other party.

7. Execution

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"

"City Manager"

CITY OF VALLEJO

By: [Signature]

Mayor

Date

[Signature]

Gregory Nyhoff

Date

ATTEST

By: [Signature]

City Clerk

Date

APPROVED AS TO FORM

By: [Signature]

City Attorney

Date